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IN THE
COURT OF APPEALS OF INDIANA

ANDRE PITTMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0701-CR-42
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0502-FB-00012
71D02-0509-FB-00113

JULY 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Andre Pittman ("Pittman") entered a guilty plea to the offense of burglary and the offense of armed robbery. Pittman received an enhanced twelve-year sentence on the burglary charge and an enhanced twenty-year sentence on the armed robbery charge, eight of those years on probation. The sentences are to be served consecutively.

Pittman's appeal contests what he considers an erroneous sentence.

ISSUES

Pittman states the issues as:

I. "Whether the trial court's decision to enhance Defendant's sentence based upon extrinsic evidence concerning a juvenile adjudication violates the defendant's constitutional rights set forth in *Blakely* v. *Washington.*"[1]

II. "Whether there was sufficient evidence to establish that the Defendant's juvenile adjudication would have constituted a Class B felony as an adult so as to require a mandatory minimum executed sentence."

III. "Whether Defendant's sentence was appropriate in light of the nature of the offense and the character of the offender."

FACTS

Pittman[2] broke and entered a residence on February 8, 2005. An air conditioner had been pushed from the window, the residence was ransacked, and clothing and appliances stacked and ready for removal. Pittman was found inside. The owner said the

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[1] *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

[2] Pittman's date of birth is December 25, 1986.

air conditioner was in place when he left and that he did not give permission for anyone to enter the home. Pittman was charged with the Class B felony of burglary.

Pittman entered a guilty plea to this offense; however, he was allowed to withdraw his plea.

On September 10, 2005, Pittman entered a hotel and committed a robbery by taking money from the clerk. The clerk and another eyewitness positively identified Pittman as the robber. Pittman was charged with the Class B felony of armed robbery.

Pittman entered a guilty plea to both offenses on October 3, 2006, and was sentenced as indicated above.

Additional facts, as they are pertinent to the issues, will be added as needed.

DISCUSSION AND DECISION

Issue I and II.

We combine the first two issues for the purpose of discussion and decision.

Sentencing determinations are within the sound discretion of the trial court, and we will reverse for an abuse of discretion. *Truax v. State*, 856 N.E.2d 116, 125 (Ind. Ct. App. 2006). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* Concomitant with the abuse of discretion standard, Pittman also argues that there was insufficient evidence to establish Pittman's juvenile record. When considering a challenge to the sufficiency of the evidence we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore we neither reweigh the evidence nor judge witness credibility. *Gleaves v. State*, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

At sentencing the State produced three documents stemming from Pittman's juvenile case. State's Exhibit 1 is a request for authorization to file delinquency petition. State's Exhibit 2 is a petition alleging delinquency and contains language that alleges Pittman committed burglary as a Class B felony pursuant to Ind. Code §35-43-2-1. The pertinent wording applicable to this issue alleges that Pittman "did knowingly and intentionally break and enter the building or structure…which building or structure was a residence". State's Exhibit 3 was an order on initial hearing. That document contained language that states that the child (Pittman) admits to the allegations that he committed burglary as charged in State's Exhibit 2, and that a sufficient factual basis exists. The trial court said:

> "…I am looking particularly at the State's Exhibit 2 which talks about Count I, Burglary, B felony. And it lays out the verbal charge, what would be a charge if it were an adult. Clearly it is tracking B felony language. It is talking about a structure which was a residence located at a certain place. That's in Exhibit 2.
>
> In Exhibit 3, what's called an Order on an Initial Hearing, the question is is this an adjudication. Exhibit 2 wasn't, neither is Exhibit 1 clearly. Is Exhibit 3 a record of an adjudication? *I find it absolutely without any reasonable doubt was an adjudication.* There was counsel. He was advised of rights. He was advised of the allegations. And it says the child admits the allegations, to-wit: IC 35-43-2-1(f)(b) Burglary." (Our emphasis.)

Pittman's *Blakely* argument is that an Indiana trial court may only enhance a sentence based on those facts that are established in one of several ways: 1) as a fact of prior conviction; 2) by a jury beyond a reasonable doubt; 3) when admitted by the defendant; and 4) in the course of a guilty plea where the defendant has waived

Apprendi[3] rights and stipulated to certain facts or consented to judicial factfinding. *Trusley v. State*, 829 N.E.2d 923, 925 (Ind. 2005). Pittman argues that none of the four situations existed in his case.

Because juvenile adjudications afford individuals sufficient safeguards, they may be considered as a "prior conviction" for the purposes of sentencing under *Blakely*. *Mitchell v. State*, 844 N.E.2d 88, 91 (Ind. 2006).

Pittman's argument notwithstanding, and after we apply the appropriate standards of review, we find no error. Insofar as the abuse of discretion standard is concerned we are of the opinion that the trial judge's decision is not against the logic and effect of the facts and circumstances before the court in light of the documents from the juvenile court which the trial judge found to be an adjudication. In a like manner, for us to find the evidence insufficient would require this court on appeal to reweigh the evidence and judge the credibility of the exhibits and the trial judges decision.

The court may not suspend a sentence for a felony for a person with a juvenile record when the juvenile record includes findings that the juvenile committed an act that would be Class B felony if committed by an adult, and less than three years have elapsed between the commission of the juvenile act and the commission of the felony for which the person is being sentenced. Ind. Code §35-50-2-2.1(a). Accordingly, the trial court ordered a mandatory minimum executed sentence of six years on each sentence.

Issue III.

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[3] *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed. 2d 403 (2000).

Pittman was sentenced to thirty-two years with eight years suspended. The trial court further ordered that the final eight years of his executed sentence be spent on probation if Pittman could demonstrate that he had been rehabilitated by that time.

Sentencing decisions are given great deference on appeal and will be reversed only for an abuse of discretion. *Johnson v. State*, 855 N.E.2d 1014, 1016 (Ind. Ct. App. 2006). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the trial court. *Members v. State*, 857 N.E.2d 1019, 1021 (Ind. Ct. App. 2006).

The trial court found that Pittman had admitted responsibility and expressed regret, his relative youth and immaturity, and a difficult background as mitigating circumstances. As aggravating circumstances the trial court found that Pittman had committed another Class B felony and then yet another shortly thereafter when he had been released on his own recognizance and that he was a significant threat to another human being. Pittman does not cite Ind. Appellate Rule 7(B) but he argues that his sentence is inappropriate. In support thereof he relies upon his age and what, he claims, is a minor criminal history.

The State posits that Pittman's criminal history includes home invasions and armed robbery. Also, the State points out that in addition to Pittman's juvenile burglary conviction there were eight other referrals to the juvenile justice system. Prior juvenile adjudications need not be presented to the jury because they come under the prior conviction exception to *Apprendi*. *Ryle v. State*, 842 N.E.2d 320, 321 (Ind. Ct. App. 2005). Pittman's other characteristics, among other things, that reflect on whether his

sentence is appropriate show that he was a gang member, used marijuana, never held a job or a driver's license.

We cannot say that there was an abuse of discretion on the part of the trial court in making his sentencing decision.

CONCLUSION

Pittman's sentence was correctly enhanced and his sentence is not inappropriate. Judgment affirmed.

SHARPNACK, J., and BARNES, J., concur.